

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION
Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC. C.O.B. ANSON
GROUP CANADA, ADMIRALTY ADVISORS LLC., FRIGATE VENTURES LP, ANSON
INVESTMENTS LP, ANSON CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF
GP, ANSON CATALYST MAST FUND LP, ACF GP, MOEZ KASSAM, ADAM SPEARS, SUNNY
PURI, CLARITYSPRING INC., NATHAN ANDERSON, BRUCE LANGSTAFF, ROB COPELAND,
KEVIN BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEUX,
GERALD DUHAMEL, GEORGE WESLEY VOORHEIS, BRUCE LIVESEY and JOHN DOES #4-10
Defendants

NOTICE OF MOTION

The Defendant, Jeffrey McFarlane, will make a Motion to a Judge presiding over the
Commercial List on a date and time to be set by the Court at the court house, 330 University
Avenue, 9th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard

- in writing under subrule 37.12.1(1) because it is
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR

- (a) An order dismissing the proceeding brought by the Plaintiffs as against the Defendant, Jeffrey McFarlane, in accordance with section 137.1(3) of the *Courts of Justice Act*;
- (b) The cost of this proceeding on a full indemnity basis, in accordance with section 137.1(7) of the *Courts of Justice Act*; and
- (c) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE

The Parties

- (a) The Defendant, Jeffrey McFarlane (“McFarlane”) was the former President and CEO of Xchange Technology Group (“XTG”), who as a former borrower of the Plaintiff has insight into the Plaintiff’s business practices and is a self-represented defendant in this action brought by the Plaintiffs.
- (b) The Plaintiffs, The Catalyst Capital Groups Inc. (“**Catalyst**”) and Callidus Capital Corporation (“**Callidus**”) are related corporations controlled by Newton Glassman (“**Glassman**”), that purport to make investments in distressed and undervalued Canadian situations in return for control, including the provision of capital on a bridge basis to companies that cannot access traditional lending sources;
- (c) Catalyst’s principals are Glassman, Gabriel De Alba (“De Alba”) and James Riley (“Riley”) and Rocco DiPucchio (“DiPucchio”). De Alba is a Managing Director and Partner of Catalyst, Riley is a Managing Director and Chief Operating Officer of

Catalyst. DiPuccio (“DiPuccio”) is a lawyer and a Managing Director of Catalyst. Glassman was then the Executive Chairman and CEO of Callidus and is currently the Executive Chair and a Director of Callidus and Chair of the Credit Committee. Riley is Callidus’ Secretary. Both are Directors of Callidus. Riley and Glassman offer management services on behalf of Catalyst to Callidus.

OSC Whistleblower Submission

- (d) As a former borrower of XTG, McFarlane was often perplexed by the questionable tactics used by the Callidus and Newton Glassman against their borrowers. During the time in which XTG was a borrower of Callidus, some of these tactics appeared to be economically irrational, whether it was the deliberate withholding or delay of funds or the unwillingness to negotiate an exit with a prospective buyer who offered to acquire the Callidus loan for well in excess of what Catalyst eventually wrote their position down to.
- (e) It was only after reviewing the Callidus Initial Public Offering (“IPO”) Prospectus that McFarlane became suspicious of Callidus’ accounting practices and how they deviated materially in practice from the stated practices in the IPO Prospectus and from industry standard practices. McFarlane was also suspicious that Callidus did not wish to disclose a material, but unrealized loss on the XTG loan to the markets in advance of its IPO and thereby contradict its own prospectus statements.
- (f) These deviations would include the Plaintiff’s:
 - (i) inconsistent application of the Catalyst Guarantee –the IPO prospectus explicitly stated that the guarantee only covered principle, not interest, but uniquely in the case of XTG, interest was included

- (ii) accruing interest income from a borrower in Receivership with no ability to repay the loan rather than putting it into a non-accrual status
- (iii) policies around Allowance for Loan Losses
- (iv) Fair Value Measurement
- (g) Other obvious concerns included:
 - (i) Callidus' statement involving its Stalking Horse Bid that the XTG receivership would be concluded in about 2 months, when it left XTG in receivership for almost 15 months.
 - (ii) The manufacturing of earnings represented as "Yield Enhancements" by Callidus; now prohibited by the OSC
 - (iii) The inherent conflict of interest between Callidus and Catalyst Funds when facing a substantial loss or write-down
- (h) McFarlane's sources of information included, among other things:
 1. The Callidus Capital Corporation Initial Public Offering prospectus
 2. Bankruptcy, receivership, and court documents;
 3. Callidus' own public financial statements
 4. Multiple court filings relating to the Plaintiffs;
 5. Discussions with other former borrowers that have experienced similar loan misconduct by Callidus and its loan officers;
- (i) As a result of his research, largely of publicly available documents, McFarlane formed the view that Catalyst and Callidus were engaging in an unlawful and fraudulent scheme to inflate the earnings of Callidus – now a publicly traded company, and by implication, inflate the value of the Catalyst funds holding an investment in Callidus. McFarlane was also of the opinion that on occasion, Callidus would artificially inflate the value of its

assets and shift losses to its parent, Catalyst, to the detriment of limited partners in the Catalyst Funds.

- (j) Ultimately McFarlane submitted an OSC Whistleblower Complaint in or around February of 2017 in an attempt to bring to light fraudulent practices by members of the investment industry.

Communication with Journalists

- (k) As interest grew in investigating the Plaintiff's business and accounting practices, McFarlane was often approached by investigative journalists. When McFarlane did agree to speak with journalists it was usually to confirm or point out patterns in publicly available documents or to relay his own experience with Callidus as a Borrower.

The Plaintiffs Commence Multiple Proceedings against McFarlane

- (a) On 7 November 2017, the Plaintiffs commenced this action against McFarlane and others (the "Action"). As against McFarlane and others, the Plaintiffs seek damages for:
 - (i) defamation;
 - (ii) civil conspiracy;
 - (iii) intentional interference with economic relations;
 - (iv) injurious falsehood; and
 - (v) breach of the *Securities Act*;
- (b) The Plaintiffs have commenced this Action at the same time as they have commenced a parallel action for defamation against McFarlane arising from the

same set of facts in Court File No. CV-18-593156-00CL (the “Parallel Action”);

- (c) The same allegations of defamation and conspiracy made against McFarlane in this Action are duplicated in the Parallel Action;
- (d) There is no genuine issue for trial with respect to any of the factual allegations made by the Plaintiffs against McFarlane in this Action or in the Parallel Action;
- (e) The Defendants never responded to a Demand for Particulars served on November 14, 2018

The Proceeding is a SLAPP

- (a) The core allegation in the Action that McFarlane acted in furtherance of a “conspiracy” with and among the Defendants, against the Plaintiffs, simply by filing a regulatory whistleblower complaint and speaking to the press, is vexatious and is baseless and demonstrates the nature and purpose of this action as a SLAPP. This Action is being pursued for the collateral purposes of deflecting from the plaintiffs’ own wrongful and unlawful misconduct and business failures and losses.
- (b) The Parallel Action constitutes and is being pursued as a strategic lawsuit against public participation (a “SLAPP”). The Action arises from an expression made by McFarlane, namely, the opinion included in the Wall Street Journal article and the OSC whistleblower complaint, and is designed primarily to discourage public discourse on matters of public interest, and in particular:
 1. to discourage individuals who make whistleblower complaints to the OSC and other Canadian securities regulators, and;
 2. to discourage individuals from speaking with journalists about their concerns;

- (c) The Action is also designed to reinforce the Plaintiffs' reputation for engaging in aggressive litigation, as a means to discourage individuals or journalists from investigating the Plaintiffs' business and accounting practices;
- (d) The Action does not have substantial merit;
- (e) The harm likely to be or have been suffered by the Plaintiffs as a result of McFarlane's expression is not sufficiently serious that the public interest in permitting the Action to continue outweighs the public interest in protecting the McFarlane's expression;
- (f) Section 137.1 of the Courts of Justice Act, R.S.O. 1990, c. C.43; and
- (g) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Affidavit of Jeffrey McFarlane, to be sworn; and
- (b) Such further and other evidence as McFarlane may advise and this Honourable Court may permit.

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October 16, 2019

JEFFREY MCFARLANE
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Durham, NC, 27713, USA
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Self-Represented

TO: SERVICE LIST

THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs

-and-

WEST FACE CAPITAL INC. et al.
Defendants

Court File No. CV-17-587463-00CL

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JUSTICE COMMERCIAL
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PROCEEDING
COMMENCED AT
TORONTO

NOTICE OF MOTION

JEFFREY MCFARLANE

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